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reconsideration of the HDO. That is untrue. It is clear that the hearing is going forward on the designated issues; the Chief is not called to support reconsideration but to produce testimony. The Bureau's assertion that producing the Chief is "in effect" opening the HDO to reconsideration only reflects the extraordinary sensitivity of the Bureau to the lack of any evidence whatsoever to support the HDO.

3. Second, the Bureau asserts that Bott is "again attempting to shift the burdens." Bott has never attempted to shift the burdens. Bott has sought to obtain a statement of the "precise factual questions" he is expected to address, to which he believes he is entitled. Being told what question(s) one must resolve is not at all akin to a shifting of burdens, as Bott made clear at the prehearing conference (Tr. 23-24).

4. Third, the Bureau asserts that Bott is "attempting to obfuscate the proceeding." It points out that "it is Bott, not the Chief, Mass Media Bureau, who is on trial." Bott is not attempting to obfuscate the proceeding. In the course of denying Bott's request that the Bureau be directed to outline the precise factual questions Bott is to address under the issues, the Presiding Judge said "I think the H.D.O. gives you enough -- it would give me enough to know how to proceed at the hearing. . . ." (Tr. 27) Taking this advice, and on the basis of evaluating the HDO, Bott has determined to proceed at hearing by, in part, eliciting testimony from the Chief. To seek that testimony does not put the Chief on trial, as the Bureau complains. It is like many simple,

routine cases of the defendant calling a perhaps adverse witness, in some cases the plaintiff, whose testimony, even if only an admission of a lack of personal knowledge, may be helpful to the defendant's case. This happens in courtrooms everyday. It neither shifts the burden of proof nor does it cast the plaintiff (or non-plaintiff adverse witness) as the defendant.

5. While the Bureau argues that the Chief should not appear as a witness because of his lack of "personal knowledge", the extent of his knowledge or lack thereof will be evident when he appears as a witness. He has not, incidentally, provided a declaration that he lacks all personal knowledge of the matters raised by Bott. Knowledge by the Chief sufficient to be admissible as evidence would be likely; the issue confronting Bott is, after all, whether he made misrepresentations to or lacked candor with the Commission in prosecuting an application in the Mass Media services, not whether he jaywalked in Kansas City. Moreover, the admission by the Bureau in paragraph 3 that the Chief had knowledge of "the content of the text of the Bureau's Response" to Bott's Request for Admission suggests strongly that, as Bott has believed, the Chief is an exceptionally appropriate witness with respect to Bott Exhibit 1.<sup>1</sup>

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<sup>1</sup> The representation allegedly made by Bott that throughout the six year effort to obtain the Blackfoot permit he intended to operate the Blackfoot station with a commercial religious format is a representation allegedly made to the Commission is an assignment application proceeding in the Mass Media Bureau, not a representation allegedly made to some private party. HDO, ¶¶ 3 and 9.

WHEREFORE, Bott urges the Presiding Judge to deny the Mass Media Bureau's Opposition filed October 19, so that Bott may call the Chief, Mass Media Bureau, as a witness.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Roberta Wadsworth, a secretary in the law offices of Fletcher, Heald & Hildreth, hereby certify that I have on this 19th day of October, 1993, had copies of the foregoing RESPONSE TO "MASS MEDIA BUREAU'S OPPOSITION TO BOTT'S REQUEST FOR THE CHIEF, MASS MEDIA BUREAU TO TESTIFY" mailed by U.S. Mail first class, postage prepaid, to the following:

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